



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, RR, RP, PSF, LRE, OLC, FFT

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenants applied for:

- cancellation of the One Month Notice to End Tenancy for Cause (the Notice), pursuant to section 47;
- an order to reduce the rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order requiring the landlord to carry out repairs, pursuant to section 32;
- an order requiring the landlord to provide services or facilities as required by the tenancy agreement or the Act, pursuant to section 62;
- an order to restrict or suspend the landlord's right of entry, under section 70;
- an order for the landlord to comply with the Act, the Residential Tenancy Regulation (the Regulation) and/or tenancy agreement, under section 62; and
- an authorization to recover the filing fee for this application, under section 72.

The hearing on July 15 was adjourned to October 28, 2021 due to time constraints. Tenants DF (the tenant) and AW and landlord MG (the landlord) attended both hearings. Witness for the landlord JT also attended both hearings. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the Act.

#### Preliminary Issue - Unrelated Claims

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an application for dispute resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the Notice and the continuation of this tenancy is not sufficiently related to any of the tenants' other claims to warrant that they be heard together.

The tenants' other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the notice. I exercise my discretion to dismiss all of the tenants' claims with leave to reapply except cancellation of the notice to end tenancy which will be decided upon.

#### Issues to be Decided

Are the tenants entitled to:

1. Cancellation of the Notice?
2. An authorization to recover the filing fee?

If the tenants' application is dismissed, is the landlord entitled to an order of possession?

#### Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlord's obligation to present the evidence to substantiate the Notice.

Both parties agreed the tenancy started in August 2018. Monthly rent is \$1,000.00, due on the first day of the month. At the outset of the tenancy a security deposit of \$500.00 and a pet damage deposit of \$250.00 were collected and the landlord holds them in trust.

The landlord affirmed he attached the Notice to the tenants' front door on March 18, 2021. The tenant confirmed receipt of the Notice on March 18, 2021. The reasons to end the tenancy are:

- The tenant has allowed an unreasonable number of occupants in the unit/site.
- The tenant is repeatedly late paying rent.
- The tenant or a person permitted on the property by the tenant has
  - Significantly interfered with or unreasonably disturbed another occupant or the landlord.
  - Seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
  - Put the landlord's property at significant risk.
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
  - Damage the landlord's property.
  - Adversely affect the quiet enjoyment, security, safety or physical well-being of the other occupant
  - Jeopardize a lawful right or interest of another occupant or the landlord.
- Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.
- Tenant has not done required repairs of damage to the unit/site.
- Tenant has assigned or sublet the rental unit/site without landlord's written consent.

The details of the events are:

- endangered landlord well seeing (SIC)
- late rent more than 5 times
- fire in landlords trailer
- (illegible) tenant. No consent.
- Damage to property (more than 1 year not fixed)
- noise bylaw
- illegal (illegible)
- illegal use storage (no storage on site.)
- threaten to knock out room mate
- theft of electricity could cause fire

The Notice is dated March 18, 2021 and the effective date is April 30, 2021. The tenants submitted the application on Monday, March 29, 2021 and continue to occupy the rental unit.

The landlord affirmed the tenants paid rent late several times, smoked in the rental unit, parked their vehicle in a no parking area, caused a fire to the landlord's trailer, allowed unauthorized occupants to live in the rental unit, damaged the stairwell, stored their belongings in the shared patio, blocked the landlord's unit entrance with rocks, damaged the electric circuit and had an altercation with the landlord.

The tenant rebutted the landlord's testimony and affirmed he does not understand the reasons why the Notice was issued. The tenant submitted a written statement: "I'm not entirely sure to what he is referring. I have not endangered anything, with regards to him, or his property."

### Analysis

Pursuant to Rule of Procedure 6.6, the landlord has the onus of proof to establish, on a balance of probabilities, that the notice issued to end tenancy is valid. This means that the landlord must prove, more likely than not, that the facts stated on the notice to end tenancy are correct and sufficient cause to end the tenancy.

Section 47(1) of the Act states the landlord may end the tenancy if one or more of the following applies:

- (a) the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement;
- (b) the tenant is repeatedly late paying rent;
- (c) there are an unreasonable number of occupants in a rental unit;
- (d) the tenant or a person permitted on the residential property by the tenant has
  - (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
  - (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
  - (iii) put the landlord's property at significant risk;
- (e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
  - (i) has caused or is likely to cause damage to the landlord's property,
  - (ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
  - (iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

- (f) the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;
- (g) the tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3) [obligations to repair and maintain], within a reasonable time;
- (h) the tenant
  - (i) has failed to comply with a material term, and
  - (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;
- (i) the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34 [assignment and subletting];
- (j) the tenant knowingly gives false information about the residential property to a prospective tenant or purchaser viewing the residential property;
- (k) the rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority;
- (l) the tenant has not complied with an order of the director within 30 days of the later of the following dates:
  - (i) the date the tenant receives the order;
  - (ii) the date specified in the order for the tenant to comply with the order.

Section 52 of the Act states a notice to end tenancy must indicate the grounds for ending the tenancy:

- In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
  - (b) give the address of the rental unit,
  - (c) state the effective date of the notice,
  - (d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy,
  - (d.1) for a notice under section 45.1 [tenant's notice: family violence or long-term care], be accompanied by a statement made in accordance with section 45.2 [confirmation of eligibility], and
  - (e) when given by a landlord, be in the approved form.

The landlord may indicate as many reasons to end the tenancy as possible, but the landlord must provide clear details of the events on the Notice.

Upon further reflection, I find the Notice does not state the grounds for ending the tenancy clearly. The Notice indicates the tenants incurred in 11 of the 16 possible situations of section 47 to end the tenancy for cause. The details of the events contain

10 vague statements, some of them illegible. As the Notice does not clearly provide details of the events, the tenants cannot properly defend themselves.

Thus, I find the Notice does not comply with section 52(d) of the Act. Accordingly, the Notice is cancelled and of no force or effect.

As the tenants are successful with this application, pursuant to section 72 of the Act, I authorize the tenants to recover the \$100.00 filing fee. I order that this amount may be deducted from the next rent payment.

I note that I am not making factual findings about the causes for the landlord to issue the Notice.

#### Conclusion

The Notice dated March 18, 2021 is cancelled and of no force or effect. This tenancy will continue in accordance with the Act.

Pursuant to section 72(2)(a) the tenants are authorized to deduct \$100.00 from the next rent payment to recover the filing fee.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 03, 2021

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Residential Tenancy Branch